IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 324 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANDHIDHAM BUILDERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 324 of 2001
(MR SR SHAH) for Petitioners No. 1-6
MR AD OZA, PUBLIC PROSECUTOR for Respondent No. 1
NOTICE SERVED for Respondents No. 2-5

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/12/2001

ORAL JUDGEMENT

This Special Criminal Application has been filed by Gandhidham Builders' Association and Others praying to

issue a writ of mandamus or any other appropriate writ, direction or order restraining the respondents from proceeding against the builders, contractors, engineers, architects etc. who are the members of the petitioner No.1 Association, by way of investigation, arrest or any other manner for the offences under Sec.304 of the Indian Penal Code. It was also prayed for interim relief not to arrest any member of the Association in the event of any FIR lodged against them till the committee as prayed for is constituted.

2. It appears that this petition has been filed in the month of May, 2001 wherein this Court (Coram: H.K.Rathod,J.) vide order dated 9-5-2001 passed the following order:

> "Heard Mr.S.R.Shah, learned advocate for the petitioner and Mr.M.D.Gohil, learned APP for respondent-State.
>
> Issue notice to the respondents, returnable on 11th June, 2001."

Thereafter, vide order dated 11-6-2001, the Court has passed the following order:

> "Heard Ld. Advocate Mr.S.R.Shah for the petitioner and Ld.P.P. Mr.A.D.Oza for the State. Rule returnable on 2-7-2001. Meanwhile, respondents are directed to file reply through responsible officer of respondent Nos.2 and 3 and to serve copy thereof to the petitioners in advance. Service of rule is waived by Ld.P.P., Mr.A.D.Oza on behalf of the respondents."

Thereafter, matter could not be proceed further. It appears that members of the Association, who were shown as accused in various FIRs, have been arrested and thereafter they have been released on bail and, therefore, question of passing any order regarding prayer para 10(B) of this petition does not arise.

3. This petition has been filed through learned advocate, late Shri S.R.Shah and when matter came up for hearing on the board, notice was issued vide order dated 29-11-2001 on the petitioners returnable on 13-12-2001 directing them to appear either personally or through advocate as Mr.S.R.Shah appearing on their behalf has expired. Thereafter, none appeared on the returnable date on their behalf though notice was duly served. Therefore I have heard learned P.P., Mr.A.D.Oza for the

State of Gujarat.

4. A detailed affidavit-in-reply filed by Shri Vivek Srivastav, District Superintendent of Police, Ktuch-Bhuj shows that various complaints have been lodged and and same is being investigated by the authority and it is in crucial stage and how to investigate the matter and in what manner it should be done are prescribed in the Criminal Procedure Code itself and this Court cannot supervise the function of investigation or cannot sit on the driving seat and direct the Investigating Officer to investigate in particular manner as same are entirely the discretion of the Investigating Officer. However, Investigating Officer is expected to carry out the investigation according to law and complete the same as expeditiously as possible. Granting of prayer 10(A) is out of question because in any circumstances of the matter accused cannot be permitted to have control of investigation at any stage. Over and above, the grievance raised by the petitioner in this petition is that Investigating Officer will impose Sec.304 of Indian Penal Code on the members of the petitioner Association. It is too early to come to such a conclusion as the investigation is not yet over and as told by learned P.P., Mr.Oza, yet report of the laboratory is not received by them and they are awaiting for it and, therefore, what section is required to be imposed on the accused cannot be decided by this Court at this stage. If any grievance on the report of the investigation is there, for that, protection has been provided in Cr.P.C. If charge-sheet has been submitted in the Court against the members of the petitioner Association and they feel that particular section imposed is not applicable to them, then there is a stage which has been provided in Cr.P.C. more particularly Sec.227 of Cr.P.C. that at the time of framing the charge or prior to that i.e. after receiving the charge-sheet, accused can submit an application before the Court restraining it from framing the charge or discharge them from the charge. If at all they are not satisfied with the said remedy, other remedy available under Sec.482 of Cr.P.C. for quashing can be used. But the remedy which has been sought by way of present petition cannot be allowed to be availed of by the petitioners as this stage as it is premature and, therefore, same is required to be rejected at this stage. This Court also cannot permit anyone to supervise the investigation which has been done or which is likely to be done by the Investigating Officer.

6. In view of what have been stated hereinabove, this petition is rejected. Rule is discharged.

(R.P.DHOLAKIA,J.)

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